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Assistant Secretary John Berry
c/o Document Production Unit
1849 C Street, NW Mailstop 7024
Washington D.C. 20240

Dear Mr. Berry:

I am writing to introduce myself and add a comment to the reconciliation hearings for Native Hawaiians. I am a professor of Sociology at UC Santa Cruz and have been doing fieldwork and research for the past six years for a book on the sovereignty movement in Hawaii. I am not Native Hawaiian, nor do I hail from the islands (though my Grandfather was one of many Japanese plantation workers before immigrating to California). Most of my research focused on the 1996 Native Hawaiian Vote—but I still try to attend conventions, meetings, and the like in the islands when possible. I was present for the December 10-11 hearings that you and Mark VanNorman presided over in Honolulu.

I was keenly interested in the issue of how the federal government classifies Native Hawaiians as a group--racial minority or tribal entity. At one point in the hearings, you commented that although Mark VanNorman felt that this was already a "government to government" set of discussions, you were less sure that saying so would make it so. Though I wish Mark was right, I am almost certain the Supreme Court would not agree--or at least not based on a strict reading of the case law. I know you are probably aware of the essay by Stuart Benjamin on Native Hawaiians that appeared in the Yale Law Journal in 1996. In that article, he argues that Native Hawaiians do not constitute a tribe in any legal sense, and therefore, are subject to equal protection law, namely, the application of strict scrutiny to racial classifications. There are no articles that I know of that offer a compelling argument otherwise.

I know you are well aware that a Court ruling in *Rice v. Cayetano* favorable to Rice would be disastrous for OHA and for social policy benefits for Native Hawaiians. Even though you heard a great deal of testimony by Native Hawaiians that was anti-OHA, the loss of this special relationship could be devastating for the management of trust land of

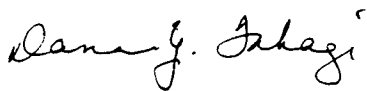
Hawaiians. In my opinion, the issue of "what the feds call Hawaiians" is significant in the immediate future to offset a future Court ruling.

The testimony from Native Hawaiians took two main positions--some, including Professor Lilikala Kame'eleihiwa, seemed to defend federal recognition of Hawaiians as "Native Americans." Others quite clearly argued for the special/unique relationship which is neither racial minority nor Native American...but Kanaka Maoli. Both categories--Native Americans and Kanaka Maoli have been used by sovereignty leaders at different times. And, within the sovereignty movement, while there has been some, I do not think there has been much internal debate about the 'name' they call themselves. In my view, given the present political and legal circumstances, the latter term, kanaka maoli is fine if and only if it can be understood within the context of federal policy that recognizes Hawaiians as deserving of some form of self-government or political autonomy. On the other hand, the term "native american" while it masks the differences between Indians and Hawaiians more clearly offers an avenue for a government to government relationship.

I write to urge you to take up the question of naming Hawaiians in a manner that reinforces their likeness to Native Americans in your recommendations to be released in February. The name seems less important than its viability for claiming a special relationship to the federal government. The lawyers most familiar with customary practices lawsuits might be helpful here...and if you are interested, the lawyers wrote about or litigated the cases that upheld Hawaiian customary practices did so, on the basis that Hawaiians had a different (if special) relationship to the state government. If you are not already familiar with those cases, please feel free to contact me for more information. Or alternatively, as Benjamin notes in his article, there are four ways in which the federal government can recognize a group as a 'tribe'--one of which includes treaty arrangements. I know this is a not well explored possibility vis a vis Native Hawaiians. Historians of 18th and early 19th century Hawaii would be the most likely to know if such a possibility exists.

Finally, let me say I was very impressed with your energetic efforts at the hearings. Your sincerity, patience, and enthusiasm for the hearings was as good as it gets.

Sincerely,

A handwritten signature in cursive script, reading "Dana Y. Takagi". The signature is written in dark ink and is positioned above the printed name.

Dana Y. Takagi